

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 338 OF 2015

ANNE MUMBI WAIGURU..... PLAINTIFF/RESPONDENT

- V E R S U S -

HON. RAILA AMOLLO ODINGA.....DEFENDANT/APPLICANT

RULING

1) Hon. Raila Amollo Odinga, the defendant/applicant herein, took out the motion dated 5th May 2017 in which he sought for the plaint to be struck out. The motion is supported by the affidavit of Paul M. Mwangi. When served, Anne Mumbi Waiguru, the plaintiff herein, filed the replying affidavit she swore to oppose the application. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the same disposed of by written submissions.

2) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have further considered the rival submissions. It is the submission of the defendant/applicant, that on 4th April 2017, the plaintiff was ordered to file a response to the interrogatories dated 15.2.2017 within 21 days. It is stated that on 25.4.2017, the plaintiff served the defendant's advocate insufficient answers to the aforesaid interrogatories and refused to answer others. It is also alleged that the plaintiff has refused to make the necessary discovery of facts as ordered by this court. The plaintiff further argued that the failure to make such discovery would deny the applicant a fair trial and therefore the suit should be struck out.

3) In response to the defendant's submissions, the plaintiff urged this court to dismiss the motion arguing that the same lacks merit. It is argued by the plaintiff that the law allowed a party to raise an objection to answering an interrogatory either in its response to an application for leave or in answer to interrogatories itself. The plaintiff pointed out that she raised objections to answering those of the defendant's interrogatories. It is also the submission of the plaintiff that the court has not been asked to make a finding that the plaintiff has failed to comply with the order of discovery, therefore there is no order issued by this court to compel the plaintiff to answer the interrogatories. The plaintiff also argued that the defendant intends to delay the finalisation of this court using such an application. It is submitted that the application is geared towards avoiding the hearing of the suit.

4) Having considered the material placed before this court and the rival submissions, it is not in dispute that this court issued an order directing the plaintiff to respond to the 15 interrogatories dated 15.2.2017 pursuant to the provisions of Order 11 rule 3(2) (d) of the Civil Procedure Rules and Section 22(a) of the Civil Procedure Act. It is also not disputed that the plaintiff filed an answer to the interrogatories wherein she raised objections and gave reasons why she was unable to answer some of those questions. The plaintiff basically objected to answering 14 out of the 15 interrogatories.

5) The defendant has argued that the plaintiff in answering the Interrogatories, has failed to demonstrate how the interrogatories are unreasonable, irrelevant, scandalous or vexatious in any way. It is trite law that when a party is directed to respond to interrogatories, that party has the option to answer straight away or in the alternative to raise an objection to answering any interrogatory. I have examined the response filed by the plaintiff. It is clear from the response filed that where the plaintiff has raised an objection to answering any interrogatory, she attached a reason for each objection. For example in response to interrogatories no. 1-6, the plaintiff has stated that those interrogatories are irrelevant and do not relate to the issues raised in this suit. In response to interrogatories no. 12, 13 and 14, the plaintiff

objected to answering the same on the basis that they are unnecessary and unreasonable. In view of the above answers and objections, can it be said that the plaintiff has outrightly refused to answer the interrogatories? With respect, I do not think so. I am satisfied that the plaintiff responded to the interrogatories in accordance with the provisions of Section 22(a) of the Civil Procedure Act and Order 11 rules 3(2) and 7(2) of the Civil Procedure Rules.

6) In the end, I find no merit in the defendant's motion dated 5.5.2017. The same is ordered dismissed with costs abiding the outcome of the suit.

Dated, Signed and Delivered in open court this 17th day of November, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant